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INCREASE LICENSE FEES UNDER PERISHABLE  
AGRICULTURAL COMMODITIES ACT OF 1930

91-1

HEARING  
BEFORE THE  
SUBCOMMITTEE ON DOMESTIC MARKETING  
AND CONSUMER RELATIONS  
OF THE  
COMMITTEE ON AGRICULTURE  
HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

FIRST SESSION

ON

H.R. 9857

JULY 17, 1969

Printed for the use of the Committee on Agriculture



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## INCREASE LICENSE FEES UNDER PERISHABLE AGRICULTURAL COMMODITIES ACT OF 1930

THURSDAY, JULY 17, 1969

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON DOMESTIC MARKETING  
AND CONSUMER RELATIONS  
OF THE COMMITTEE ON AGRICULTURE,  
Washington, D.C.

The subcommittee met, pursuant to notice, at 10 a.m., in room 1301, Longworth House Office Building, Hon. Thomas S. Foley (chairman of the subcommittee) presiding.

Present: Representatives Foley, Vigorito, Jones, Mrs. May, and Myers.

Also present: William C. Black, general counsel; Hyde H. Murray, associate counsel; John A. Knebel, assistant counsel; Christine Gallagher, clerk; and Martha S. Hannah, subcommittee clerk.

Mr. FOLEY. The Subcommittee on Domestic Marketing and Consumer Relations will come to order.

The committee meets today for consideration of H.R. 9857 by Mrs. May of Washington, to amend the Perishable Agricultural Commodities Act.

(H.R. 9857 by Mrs. May follows:)

[H.R. 9857, 91st Cong., first sess.]

A BILL To amend the provisions of the Perishable Agricultural Commodities Act, 1930, to authorize an increase in license fee, and for other purposes

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That paragraph (6) of the first section of the Perishable Agricultural Commodities Act, 1930, as amended (7 U.S.C. 499a(6)), is amended by striking out "\$90,000" and inserting in lieu thereof "\$100,000".*

*SEC. 2. Paragraph (7) of the first section of such Act (7 U.S.C. 499a(7)) is amended by striking out "\$90,000" and inserting in lieu thereof "\$100,000".*

*SEC. 3. The third sentence of section 3(b) of such Act (7 U.S.C. 499c(b)) is amended by striking out "\$50" and inserting in lieu thereof "\$100".*

Mr. FOLEY. The first witness will be Mr. Floyd F. Hedlund, Director of the Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture.

### STATEMENT OF FLOYD F. HEDLUND, DIRECTOR OF THE FRUIT AND VEGETABLE DIVISION, CONSUMER AND MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. HEDLUND. Mr. Chairman, members of the committee, I am Floyd F. Hedlund, Director, Fruit and Vegetable Division, Consumer and Marketing Service of the U.S. Department of Agriculture. I

appreciate the opportunity to appear before this subcommittee to present the views of the Department of Agriculture on H.R. 9857, a bill to amend the provisions of the Perishable Agricultural Commodities Act, 1930, to authorize an increase in license fee, and for other purposes.

This bill would raise the authorized ceiling on the annual license fee required under the Perishable Agricultural Commodities Act to \$100 from the present maximum of \$50. It also would broaden the exemption from license now provided in the act for certain retailers and frozen food brokers by raising the level of the exemption from \$90,000 to \$100,000.

Background: Before discussing the provisions of H.R. 9857 further, I would like to outline briefly the purpose of the Perishable Agricultural Commodities Act and the method of its administration.

Because of the highly perishable nature of fresh fruits and vegetables, rapid harvesting, packing and distribution are essential. It is a financially hazardous business due to the risks of weather, uncertain growing conditions and unpredictable fluctuations in market prices. There are many opportunities for unethical persons to take advantage of these conditions and engage in unfair and fraudulent practices. For several years prior to 1930, unsuccessful attempts had been made to establish an industry-operated system prohibiting unfair trade practices and enforcing contracts. When these efforts failed, the leading trade associations in the fresh produce industry united in sponsoring enactment of the Perishable Agricultural Commodities Act.

The basic objective of the act is to establish a code of fair trading practices governing the marketing in interstate and foreign commerce of fresh and frozen fruits and vegetables and cherries in brine and to aid in the enforcement of contracts for marketing these commodities. Under this act, it is unlawful for any commission merchant, dealer or broker in connection with any transaction in interstate or foreign commerce to engage in certain unfair trade practices. Among these are:

- (1) To reject or fail to deliver in accordance with terms of his contract, without reasonable cause;
- (2) To dump, discharge or destroy without reasonable cause any lot received on consignment;
- (3) To fail or refuse to account correctly and to pay promptly for any lot;
- (4) To fail to perform any specification or duty arising out of a contract without reasonable cause;
- (5) To misrepresent or misbrand as to character, kind, grade, quality, quantity, size, pack, weight, condition, degree of maturity, or state, country, or region of origin; and
- (6) To fail to maintain adequate records and accounts.

Enforcement of the act is through a system of licenses. Every commission merchant, broker and dealer, including certain retailers and processors, operating subject to the act is required to be licensed. Most applicants encounter no problems in obtaining licenses under this act. However, the Secretary may deny licenses to certain individuals for specific reasons spelled out in the law, including false or misleading statements in the application; a history of repeated

violations of the act; the criminal record of the applicant; the failure to pay reparation awards or the failure to furnish required surety bonds. Licenses may be suspended or revoked for violations of the act.

There are two main phases of activity in administering the act. First, the Secretary is authorized to hear and decide disputes which involve claims for damages resulting from any violation of the fair trading principles. Complaints are filed with the Secretary; investigations are made as warranted; and, if possible, amicable settlements are worked out between the parties. If a dispute cannot be settled informally, it may become a formal proceeding in which the parties are given an opportunity to submit evidence in support of their positions, either at an oral hearing or by written submissions of evidence. If the Secretary concludes that a violation has occurred, he determines the amount of damages sustained and issues an order requiring the offender to pay such damages to the injured party by a specified date. The offender's license is automatically suspended unless he pays the amount of the award or appeals the Secretary's decision to a district court of the United States, as provided in the act.

The second main phase of activity relates to disciplinary measures. These include administrative proceedings by the Secretary to suspend or revoke licenses for violations of the act, and court actions to collect civil penalties for operating without a license, together with injunctions to restrain further operations.

The Perishable Agricultural Commodities Act is an unusual regulatory law inasmuch as it is self-supporting from annual license fees. These fees are deposited in a special PACA fund and all costs of administration of the act—except for legal services—are financed from these fees.

The Secretary is authorized to set the level of the annual license fee, within the maximum provided in the act, at an amount sufficient to provide the revenue to meet anticipated expenses for administering the act. Before the license fee has been raised, the Secretary has published the proposed rate and given all interested persons an opportunity to file their comments or objections. The present maximum fee authorization of \$50 was established in an amendment to the act of October 1, 1962. Under this authorization, the annual license fee was increased to \$36 on January 1, 1963, to \$42 on January 1, 1965, and to \$50 on January 1, 1969.

**Increase in license fee ceiling:** The statutory ceiling on license fees must be raised because of two factors: (1) the declining number of firms operating subject to license and (2) the increasing cost of administering the act. At present, the number of firms licensed is approximately 19,285, compared with an alltime peak of about 27,000 in 1956. This trend toward fewer licensees results from the continuing mergers and consolidations in the fruit and vegetable industry and the closing of many small firms. During the past 5 years, for example, the net decline in the number of firms licensed has averaged over 670 per year.

Despite the decline in number of firms licensed, the number of complaints filed under the act and the requests for advice and assistance have remained relatively constant. During the past fiscal year,

for example, a total of 2,272 reparation complaints were handled by the Department under this act. Informal amicable settlements were arranged in 930 such cases resulting in payments to the parties of approximately \$2.3 million. In addition, 341 formal orders were issued by the Department's judicial officer awarding reparations amounting to over \$777,000. The Department makes no charge for the handling of these complaints.

Also, more than 9,800 requests for advice were received last year from members of the industry seeking assistance, mostly with problems concerning marketing contracts. Many disputes are settled on the basis of these informal recommendations by the Department and the necessity of filing complaints is avoided. The Department also conducted 15 marketing seminars for various trade groups during this period to encourage compliance with the law, minimize marketing disputes, and discuss procedures followed in administering the act.

Costs of administration have been increasing, largely because of adjustments in employees' salary scales and fringe benefits which account for over 80 percent of the expenditures under this act. The costs have increased even though there has been a reduction in the number of employees engaged in the administration of the act, and this number now is at the lowest level in over 10 years.

The PACA fund incurred a deficit of over \$12,000 in fiscal year 1968 and a deficit of approximately \$58,000 during the first 6 months of fiscal year 1969. With the increase in the license fee that became effective January 1, 1969, it is estimated that income and expenditures for fiscal year 1969 as a whole about balanced out. With continued decline in numbers of licensees, it is likely that deficits will occur in fiscal years 1970 and 1971. We estimate it will be necessary to increase the license fee again in the amount of approximately \$10 about January 1, 1971, in order to obtain sufficient revenue to meet the anticipated costs of administration. The small reserve in the PACA fund would soon be depleted if such deficits continue.

**Exemption for retailers and frozen food brokers:** As pointed out earlier, H.R. 9857 would broaden the exemption from license for certain retailers and frozen food brokers from \$90,000 to \$100,000. Since the Perishable Agricultural Commodities Act was enacted in 1930, the great majority of food retailers have always been exempt from the licensing provisions. From 1930 to 1962 this exemption was expressed in terms of tonnage of perishable agricultural commodities purchased by retailers. When the act was amended in 1962, the exemption was broadened and was converted from a tonnage to a dollar volume basis. At present, all retailers are exempt whose purchases of perishable agricultural commodities amount to \$90,000 or less per year.

Also, in 1962 an exemption from license was added for the first time for frozen food brokers who negotiate sales for and on behalf of vendors and whose sales of frozen fruits and vegetables have an invoice value of \$90,000 or less per year.

The bill now under consideration would raise the exemption for both retailers and frozen food brokers to \$100,000. The proposed increase in the amount of the exemption would approximate the increase in the index of wholesale food prices that has taken place since 1962 when the \$90,000 exemption was established.

There are an estimated 200,000 retail food firms operating at present. Only approximately 4,000 of these firms currently are licensed under PACA in view of the exemption which excludes all those whose purchases of perishable agricultural commodities total less than \$90,000 per year. Since fresh and frozen fruits and vegetables account, on the average, for about 9 percent of retail food store gross sales, this means that raising the exemption to \$100,000 would exclude most retail firms with gross sales of less than \$1.5 million per year. Therefore, it is estimated that fewer than 2 percent of all food retail firms would be subject to license under the bill as proposed.

The Department's records indicate that there are fewer than 300 frozen food brokers currently subject to license under PACA. Consequently, an increase in the exemption for these brokers from \$90,000 to \$100,000 would affect a relatively small number of such firms.

When this act was amended in 1962, there were various proposals to broaden even further the exemption for food retailers and certain frozen food brokers. It was alleged at that time the exemption of such essential segments of the industry would not impair the effectiveness of the act. We cannot agree with this analysis. Shippers, carlot receivers, brokers, wholesalers, jobbers, and retailers are all licensed under this act in order that protection against unfair trade practices may extend throughout the marketing system.

Retailers, in their capacity as buyers of produce in wholesale quantities, are one of the most important links in the chain of distribution. Although sales at retail are not covered by the PAC Act, retailers have been licensed because of the heavy volume of produce they purchase. It is as essential for retailers to live up to their contractual bargains as it is for their suppliers. During the 3 fiscal years; 1967, 1968, and 1969, a total of 189 reparation complaints were filed involving retailers. Some involved retailers as complainants, others as respondents. If the industry is to function in an orderly manner, all segments must observe the fair trading rules of this act. No one part can be omitted and still expect the industry to function efficiently.

It is sometimes suggested that there is no need for retailers buying from licensed wholesalers to be covered by this act. Without such coverage, the protection which it offers would be most inadequate. For example, complaints often are filed under this act between two licensees located in the same city involving commodities which have originated in other States. There appears to be no more justification for exempting from license a retailer who happens to buy most of his produce from a licensed local wholesaler than there would be to exempt wholesalers who may buy a substantial part of their produce from licensed local carlot receivers.

Turning now to the role of frozen food brokers, there is a wide use of brokers in the marketing and distribution of frozen fruits and vegetables. The regulations issued under the PAC Act specify the duties of brokers in negotiating valid and binding contracts, including the type of confirmations to be issued and the records to be maintained on these transactions. Brokers have an unusual responsibility since they act as agents for their principals in contract negotiations and the brokers' records are vital in determining the details of these contracts. If the buyers and sellers of fruits and vegetables are to be covered by this act, then it is equally essential that brokers be covered.

**Recommendation of PACA Industry Conference Group:** The question of future financing of PACA was considered at length by the PACA-Industry Conference Group at its meetings in February 1968 and again in February 1969. The conference group is an official advisory committee appointed by the Secretary of Agriculture and is representative of all segments of the fruit and vegetable industry including growers, shippers, brokers, wholesalers, terminal market receivers, and retailers. Its purpose is to advise with the Department on problems arising in the administration of the PAC Act. In its considerations of the problem of financing, the conference group examined various possible levels of license fees, as well as the alternative of financing by appropriation instead of fees. At the conclusion of its deliberation, the conference group reaffirmed its view that this act should be self-supporting, that is, not financed from appropriated funds. It also recommended that the license fee should remain at a uniform rate but that the act be amended to raise the ceiling on the annual fee to \$100.

In view of the various considerations involved, the Department favors passage of this legislation.

Thank you, Mr. Chairman.

Mr. FOLEY. Thank you, Mr. Hedlund.

Mrs. May?

Mrs. MAY. Mr. Hedlund, thank you for a very clear statement of the purposes and the reasons for the bill which I have introduced on behalf of your Department.

I have a couple of questions, clarifying questions, Mr. Chairman.

Now, I can understand the rationale, as you presented it, for the increasing costs of administering this act. I notice that you said in 1968 you had run up a deficit of \$12,000.

Mr. HEDLUND. Yes, ma'am.

Mrs. MAY. What I am curious about is why in 1969 was there a \$58,000 deficit in the first 6 months? That seems a huge jump and I am curious about why the deficit rose so rapidly.

Mr. HEDLUND. You will recall, Congresswoman May, that in July 1968 an increase in the pay scale became effective and increased our costs for that fiscal year. That is one of the primary reasons.

I did also say that since we raised the fee on January 1, 1969, that for the fiscal year 1969 as a whole, we will about balance out on income and expenses.

Mrs. MAY. I see. In other words, Congress has to bear its share of the blame, then, for the pay raise.

Mr. HEDLUND. Well, I do not want to blame anyone. It is just one of those facts of life.

Mrs. MAY. Now, as I understand your statement, you went on to say in your financial projections for the future you still anticipate it will be necessary to raise the fees further? Above the \$100 in 1971?

Mr. HEDLUND. No, ma'am. I did not mean to infer that at all. I meant that it would be necessary for the Secretary to raise the actual fee from \$50 to approximately \$60 in a couple of years. It would be a raise from what it is now but not more than the \$100 which is being asked here for Congress to approve.

Mrs. MAY. Yes. I think we should make it clear for the record the raise from \$50 to a \$100 merely places a ceiling, is that not right?

Mr. HEDLUND. Absolutely.

Mrs. MAY. Of a \$100. And then it will be up to the Secretary to determine on the basis of the fiscal facts at what point in any one year he feels it is necessary raise the fees within the limitations under \$100.

Mr. HEDLUND. That is correct.

Mrs. MAY. I think that is all, Mr. Chairman.

Mr. FOLEY. Mr. Vigorito?

Mr. VIGORITO. I do not have any, Mr. Chairman. Mrs. May brought out a couple of points that I was interested in.

Thank you.

Mr. FOLEY. Mr. Myers?

Mr. MYERS. Thank you, Mr. Chairman.

Mr. Hedlund, you spoke in your presentation about there being 300 retailers that are now under license. If you should increase the exemption to \$100, do you know how many retailers would be exempted?

Mr. HEDLUND. Congressman Myers, we have made some estimates naturally, but it is difficult to predict these things. Information available to us on the volume of business conducted by various categories of licensees is kind of sketchy, but we have made an estimate, good or bad, that the increase to \$100,000 will exempt approximately 165 additional retail firms.

Mr. MYERS. You are cutting it down to 145 firms that will be carrying licenses, are you not?

Mr. HEDLUND. Oh, no.

Mr. MYERS. Retailers.

Mr. HEDLUND. The 300 that you mentioned, sir, relates to brokers.

Mr. MYERS. Oh, brokers.

Mr. HEDLUND. We have about 4,000 retailers now licensed.

Mr. MYERS. I misunderstood you—

Mr. HEDLUND. No. That relates to frozen food brokers. We have about 4,000 retailers now licensed.

Mr. MYERS. Why are you increasing from \$90,000 to \$100,000? What is the reasoning behind this?

Mr. HEDLUND. The reasoning behind it is to give those retailers about the same exemption rate as they had in 1962.

Mr. MYERS. You are accommodating inflation, then.

Mr. HEDLUND. Exactly.

Mr. MYERS. How do you know that a retailer is complying with the license requirement in his sales of perishable products?

Mr. HEDLUND. We are constantly checking for unlicensed firms who may be operating subject to license. For example, we check all the published lists of retailers. Those that are unlicensed but which appear to be large enough to be subject to license are contacted, usually by mail, to determine if they require a license. In some cases, we also make a check in person.

Mr. MYERS. You audit them, then, is that right?

Mr. HEDLUND. We audit their purchases of perishable agricultural commodities.

Mr. MYERS. Now, does this expense come out of this fund?

Mr. HEDLUND. Yes, sir.

Mr. MYERS. Have you ever thought about a graduated fee schedule according to the number of sales that they have? A small one, just barely doing the \$100,000 or \$90,000 today pays the same rate as that that does a million dollars of sales, is that correct?

Mr. HEDLUND. That is correct.

Mr. MYERS. Has there been any consideration given to a graduated fee according to the size of sales and naturally as the sales go up the liability goes up and the necessity for your actions go up, does it not?

Mr. HEDLUND. Congressman Myers, we have studied various aspects of this subject for at least the last 10 years that I know of. We made a survey of PACA licensees in 1961. We made another such survey in 1968. And this matter was considered rather extensively, as I pointed out, by the PACA-Industry Conference Group, our advisory committee from the industry.

They have discussed this matter fully and have always concluded that a uniform fee was more appropriate.

Now, there are problems, of course, in determining what the fee should be for any particular licensee under a variable fee system. Also, there is the argument that it is not necessarily the big firms that are causing the difficulties in the industry resulting in increased administrative expense. But perhaps one of the most important factors has been the difficulty of determining which fee category the various licensees would be in. It would require a considerable amount of auditing to determine this.

Mr. MYERS. Along that same line, of the complaint bases that have come before your Division, how many of these are involving or are there any involving nonlicensee retailers?

Mr. HEDLUND. Well, I do not know the answer to that question.

Mr. MYERS. Are there any?

Mr. HEDLUND. We cannot accept complaints against a nonlicensee. We have no basis for dealing with him.

Mr. MYERS. In other words, if someone has a complaint against a small dealer, you say I am sorry, I cannot help you.

Mr. HEDLUND. That is right, because there is no way that we could make the man follow out any action that might be taken if he is not licensed.

The only way that we can enforce any action against a person under this act is through suspending or revoking his license. If he does not have a license, obviously he cannot be made to comply.

Mr. MYERS. In your deficits here, have you ever given any consideration, something like a court will assess costs against the loser, have you ever considered assessing costs against the losing retailer here or wholesaler or broker?

Mr. HEDLUND. The conference group has considered the question of whether we should charge a fee, similar to court costs, for each case handled. The conclusion has been that the small operator could not afford to pay such a fee. Through a system of reasonable licensee fees we are spreading the administrative cost over the entire industry, uniformly for all licensees.

Mr. MYERS. I did not understand exactly your response to Mrs. May's question about the deficit this year of \$58,000 for the first half.

Mr. HEDLUND. Yes, sir.

Mr. MYERS. And I think you said the second half it would balance out?

Mr. HEDLUND. Yes, sir; because the fee was raised from \$42 to \$50 on January 1, 1969. That means that for the last half of the fiscal

year, our income increased considerably. While the final figures are not yet in, I think for the whole fiscal year 1969 we will about balance out.

Mr. MYERS. How have you met deficits prior to this? Was there some reserve or—

Mr. HEDLUND. We have a reserve fund which I mentioned.

Mr. MYERS. Oh, did you? I missed that part.

Mr. HEDLUND. All of the receipts from license fees are deposited in the Treasury in a special PACA fund and all expenses are paid out of that fund. It is a type of revolving fund and we now have roughly \$360,000 reserve in that fund.

Mr. MYERS. What you are saying, you have never had to come to the Congress for an appropriation to fund this operation.

Mr. HEDLUND. Not since the early 1950's. I did not put it in my statement, Congressman Myers, but originally this act was entirely financed from appropriations. In 1930 when the law was enacted, Congress levied a fee on every licensee and this revenue was deposited in the general receipts of the Treasury. Congress then appropriated funds for the administration of the act.

In the first 20 years of the operation of this act, the revenue from fees amounted to considerably more than the Congress appropriated to administer the act. The industry then proposed that we ought to turn this thing around because they desired more service for the fees they were paying. This could not be done without increasing appropriations. Consequently, Congress in 1950 amended the statute to provide for a special PACA fund into which all fees would be deposited and from which all administrative costs would be paid.

This fund now has built up a small reserve. Since we have no other source of revenue, if this fund goes broke, we are out of business.

Mr. MYERS. But with this operation carrying its own load, you have had very few complaints from the participants, from those who have to buy licenses, have you not? Have you had very many complaints?

Mr. HEDLUND. No. As a matter of fact, when we have proposed to increase the license fee, there has been practically no adverse comment from anyone. Now, naturally you are going to have a few complaints on any increase in fees. But there has been very little in the way of real concern on this factor. And as I mentioned, our advisory group has taken the position consistently that they would rather have the industry pay the cost of administration than go to Congress for appropriations.

Mr. MYERS. Were you around when you made a transition into the present pay-your-own-way program?

Mr. HEDLUND. I was around, sir, but I did not have a great deal to do with this program at that time.

Mr. MYERS. You are on a different level now, is that right?

Mr. HEDLUND. That is correct.

Mr. MYERS. It has been accepted by the industry, though, pay your own way.

Mr. HEDLUND. Exactly.

Mr. MYERS. Thank you.

Thank you, Mr. Chairman.

Mr. FOLEY. Mr. Jones?

Mr. JONES. Thank you, Mr. Chairman.

Mr. Hedlund, I think you made a very effective statement and I appreciate it very much. What you actually say is that you have raised the ceiling, the Secretary has, as far as he can and this provides simply for an increase in the ceiling of \$100.

Mr. HEDLUND. That is correct.

Mr. JONES. It does not necessarily mean that he will raise it to the ceiling, however. He will raise it to whatever amount he needs.

Mr. HEDLUND. Correct.

Mr. JONES. Thank you. That is all.

Mr. FOLEY. Mr. Hedlund, as you know, I share some of Mr. Myers' concerns about the flat fee system applying equally to all retailers regardless of the size of their operations. As I understood your answer, the main problem lies in the administration of a graduated fee system.

Mr. HEDLUND. I think that would be one of the big difficulties; yes.

Mr. FOLEY. Do the large retail chains with many outlets generally pay one license fee for the entire system; for example, A. & P. or Safeway or Giant or any of the rather large chains locally or nationally?

Mr. HEDLUND. Well, sir, that depends on the organization of the company. The rule is that every legal entity must have a license. Some chainstore firms are organized as one corporation. In such a case only one license is required. But many chains consist of numerous corporations and then each corporation has to have a separate license.

Mr. FOLEY. In some chains might there be one corporation that would do the buying for the entire system and, therefore, considered a wholesaler? Or are there chains where actually each individual outlet is separate?

Mr. HEDLUND. We have some chains that have centralized buying units that do all of the buying. We have others that are split into many corporations covering individual stores or divisions. Still others hire somebody else to do their buying for them.

Mr. FOLEY. Was the decision of the advisory council unanimous in recommending this increase to \$100 and a continuation of the flat fee?

Mr. HEDLUND. Yes, sir.

Mr. FOLEY. There was no minority report in that recommendation.

Mr. HEDLUND. There was no minority report, although, there was one member of the group that did not agree with the final recommendation for a uniform fee.

Mr. FOLEY. In your statement you mentioned that about 9 percent of the volume of a typical retailer is in fresh fruits and vegetables and you estimated then that increasing it from \$90,000 to \$100,000 indicates they did gross sales less than \$1.5 million. My arithmetic would make that \$1.1 million.

Mr. HEDLUND. Well, sir, the exemption applies to the invoice value.

Mr. FOLEY. I see.

Mr. HEDLUND. And my figure on total gross sales was of retail value.

Mr. FOLEY. I see.

Mr. HEDLUND. So, you have to add the retail markup in converting from one to the other.

Mr. FOLEY. \$400,000 represents the markup.

Mr. HEDLUND. Well, 25 to 30 percent is the normal retail markup, I believe.

Mr. FOLEY. Do you estimate that this increase from \$50 to \$100 a year if enacted would carry the program under a self-supporting basis for the foreseeable future, for a decade or so?

Mr. HEDLUND. Well, I think so Mr. Chairman, but this is purely my own estimate, that it might go—

Mr. FOLEY. I understand it is speculative.

Mr. HEDLUND. It might carry for as long as 10 years based upon past performance, but that also depends a great deal on the inflationary pressures and how much the administrative cost actually goes up.

Mr. FOLEY. In the latter part of your statement you made the point rather clearly, I think, that you feel it is important to maintain the retail participation in this license program.

Mr. HEDLUND. Yes, sir.

Mr. FOLEY. Does that not argue a little bit against increasing the exemption?

Mr. HEDLUND. Yes; it does. And I suppose I would have to say that if the Congress does not want to increase the exemption, I would not quarrel with them.

Mr. FOLEY. Do you have any estimates about the number of firms, retail firms, that would be additionally exempted; did you say it was about 300?

Mr. HEDLUND. We estimate about 165 additional retail firms would be exempted if the exemption is increased from \$90,000 to \$100,000. I have to add, Mr. Chairman, that these are purely estimates.

Mr. FOLEY. Yes; I understand. Has there been any sentiment in the council, the conference group, for reducing the exemption?

Mr. HEDLUND. No, sir.

Mr. FOLEY. No one has suggested that.

Mr. HEDLUND. No, sir. Nor has it been discussed. I think it should be said perhaps that the exemption that resulted in 1962 was an exemption that was made by the Congress. It was not something that was recommended by the Department or by the advisory group.

Mr. FOLEY. I see. So, the advisory group has more or less accepted that exemption as a congressional guideline and acted accordingly.

Mr. HEDLUND. That is correct.

Mr. FOLEY. Let me broaden the question a little bit. Have there been recommendations or objections made from the industry itself outside the conference to the exemption policy? Have there been recommendations to eliminate exemptions or reduce them that you are aware of?

Mr. HEDLUND. Well, there has been some discussion, Mr. Chairman, and I have heard comments to the effect that, perhaps no one should be exempted. But I do not think those have been more than just remarks.

It should be borne in mind that from the very beginning—ever since the act was passed in 1930—most retailers have been exempt, so that I do not think there has really been very serious thought given to going back now and including all retailers.

Mr. FOLEY. I assume that if the exemption were reduced, and more retailers were included, this would substantially raise the administrative work of the Department and might threaten the self-supporting character of the program; is that correct?

Mr. HEDLUND. Well, it would certainly have an effect upon administrative costs because there are a considerable number of retailers and it would take a lot of time and effort to check on them.

Mr. FOLEY. Does the staff have any questions?

Mr. Black? Mr. Murray?

Mr. Hedlund, we thank you very much for your testimony. As always it has been very helpful to the subcommittee.

The next witness will be Mr. Robert L. Berner, Robert L. Berner Co., Chicago, Ill.

Mr. Berner.

**STATEMENT OF ROBERT L. BERNER, ROBERT L. BERNER CO.,  
CHICAGO, ILL.**

Mr. BERNER. Mr. Chairman, members of the subcommittee, because I favor the amendment to H.R. 9857 I am grateful for the opportunity to talk about it.

I have been in the produce business since 1918. We have our national headquarters at South Water Market in Chicago but we have plants in Oregon, Alabama, Cook County, Wis. We have offices in other parts of the United States. We are distributors of fresh fruits and vegetables to wholesalers and chainstores. Other than chainstores, we do not do any retail business, so I cannot speak with any authority about it.

We operated in the chaotic days before we had the PACA, prior to 1930. We have had a little more pleasant life since 1930. I do not know everybody in the produce business but I know an awful lot of them nationwide and I have talked to them about the PACA. You know, as I do, and everybody else does, that many people are always complaining about the bureaucrats running the United States and we ought to get rid of the bureaucrats, and I always—if they are produce men I agree with them. I say, you are right. Start with the PACA. Let us put them out of business. Oh, no; do not touch them. We need them. We have got to keep the PACA.

I have been on this industry conference group since 1958 when it started and I have never missed a meeting, and many people in the industry know that I am on it, and many of them talk to me about it, and I also talk to them. Within the last—I think our meeting when the conference group suggested to the officials that the ceiling be raised, I think that was in February of this year in New Orleans. Since then I have talked to a number of people and with no exception the answers that I have gotten, do not let anything weaken the PACA. If it is necessary to raise the dues, raise the dues. By all means do not let anything weaken it.

As a result, I strongly urge the passage of it and I am not the spokesman for the industry but I have talked to a lot of people about it.

Mr. FOLEY. Thank you very much, Mr. Berner. I think your testimony is a very helpful counsel from someone who, I am sure knows the industry very, very well.

I understand that the general performance of the Department and the PACA has been considered satisfactory by those who have been licensees in the industry.

**Mr. BERNER.** Yes. I have heard—the only complaints I have heard have been people whose licenses have been taken away from them.

**Mr. FOLEY.** Quite normal exception, perhaps.

**Mrs. May?**

**Mrs. MAY.** Mr. Berner, you have heard the previous discussion with Mr. Hedlund. In your discussions within your trade, among your acquaintances and friends, has this subject of lowering the exemption ever come up and what is the reaction you find to taking more people out from under exemption versus keeping—raising the exemption as we have in this bill from \$90,000 to \$100,000?

**Mr. BERNER.** Well, now, by lowering the exemption, you are speaking of retailers?

**Mrs. MAY.** I am speaking of including the retailers, small ones.

**Mr. BERNER.** I really cannot speak with much authority on it because we do not do any business with them. Now, we do business with people who do business with them. I have heard—once in a while I have heard a man say, oh, I wish to hell that fellow was licensed so we could go after him, you know, but very seldom have I every heard it. Very seldom.

**Mrs. MAY.** Thank you, Mr Chairman.

**Mr. FOLEY.** Mr. Vigorito?

**Mr. VIGORITO.** No questions.

**Mr. FOLEY.** Mr. Myers?

**Mr. MYERS.** No questions.

**Mr. FOLEY.** Mr. Jones?

**Mr. JONES.** No questions.

**Mr. FOLEY.** Thank you very much. We appreciate your appearance.

The next witness will be Mr. A. E. Mercker, executive secretary, Vegetable Growers Association of America.

**STATEMENT OF A. E. MERCKER, EXECUTIVE SECRETARY,  
VEGETABLE GROWERS ASSOCIATION OF AMERICA**

**Mr. MERCKER.** Mr. Chairman, I have a prepared statement which I would just read.

**Mr. FOLEY.** Fine. Nice to have you here.

**Mr. MERCKER.** I want to thank the committee for the opportunity to appear before you in connection with H.R. 9857, which would continue the efficient operation of the Perishable Agriculture Commodities Act of 1930, by authorizing the raising of the ceiling in annual license fees to \$100 from the present maximum of \$50 and to exempt retailers and frozen food brokers who do less than \$100,000 of business annually from the provisions of the act. This would broaden the exemption from license now provided in the act for certain retailers and frozen food brokers by raising the exemption from \$90,000 to \$100,000.

My name is Albert E. Mercker, and I am executive secretary of the Vegetable Growers Association of America. The Vegetable Growers Association of America is the only national association of vegetable growers with over 40 associations representing membership in 32 States. We are now in our 61st year, operating under the same name.

Personally, I was for several years actively connected with the wholesale produce business in New York City, N.Y. I was the district sales manager of the New York area for the Federal Fruit & Vegetable Growers, an organization handling 40,000 or more carloads of fresh fruits and vegetables annually. Therefore, I feel that I have a wide background knowledge of the value of the PACA to the fruit and vegetable industry.

This act has been in operation for almost 40 years, has operated efficiently, settling differences which can easily arise in the handling of highly perishable commodities. These disputes are acted on promptly by experienced personnel in the Department of Agriculture who have an intimate knowledge of all the aspects of the fresh fruit and vegetable business. Through the USDA administration of this act the industry saves much time and effort in the prompt settlement of the contractual disputes which are constantly arising in this business. Therefore, it is essential that this act be adequately financed to continue this most important service to the industry. The PACA has always paid its own way. I take some of that back after what I heard today. Not originally. It operates on a fee basis and the fees in the past have always paid for the expenses incurred under the act.

Increases in cost, and inflation, have hit us all and the Vegetable Growers Association of America strongly recommends the passage of H.R. 9857, which would permit the USDA to increase the fees from \$50 to \$100 to help offset some of the constantly rising expenses.

Because of the consolidation and the greater need for expertise in the handling of fresh fruits and vegetables there has been a sharp decline in the number of firms operating in the fresh fruit and vegetable industry. This is one of the reasons for the necessity to increase the fees. Therefore, we again urge that the committee report this bill favorably. We do not feel that any further exemptions should be granted to the retailers, the frozen food brokers or any other segment of the industry.

It is my understanding and belief that the USDA does not intend to immediately raise the fees to the maximum requested in this bill. As additional funds are required to administer the act license fees would be increased in steps, in future years, until the maximum limit is reached.

Mr. FOLEY. Thank you very much, Mr. Mercker.

Mrs. May?

Mrs. MAY. Mr. Mercker, would you just briefly outline your arguments behind your statement on page 2 that you do not feel that any further exemption should be granted to retailers and the frozen food brokers. Just from your viewpoint why do you think it would not be wise?

Mr. MERCKER. Well, I would not exempt them, no, because in my own experience in the produce business, I had a boss who was very lenient on my extending credit. I asked him frequently, once, why do you let me trust so and so?

Well, he said, that is all right. I will watch him. Generally, I have never been done in by a fellow with that kind of reputation because I watch him closely, but the man who gets me is a fellow who has had a good reputation and then does me in and I feel that they should be within that category.

It is recognized in here that we have inflation and they are increasing the exemption from \$90,000 to \$100,000.

Mrs. MAY. Thank you. That is all.

Mr. FOLEY. Mr. Vigorito?

Mr. VIGORITO. Mr. Mercker, would this not take care of the inflationary factor by raising it from \$90,000 to \$100,000 and relatively they would be back in the same position for the number of companies that would be covered?

Mr. MERCKER. Yes. I cannot tell how far we will have inflation, Mr. Vigorito, but it does to some extent cover it. At least to the extent of about a little bit more than 10 percent. I cannot figure how much inflation will go. I wish we did not have any more of it.

Mr. VIGORITO. Thank you. That is all.

Mr. FOLEY. Mr. Myers?

Mr. MYERS. Thank you.

Mr. Mercker, this morning we were discussing those violations that seem to have occurred with retailers who have smaller gross sales in a year. This would lead us to believe that maybe some of those presently exempted are the biggest violators and consumers are not now being protected, or the industry.

Do you have any knowledge of this information? Are many small violations now occurring through smaller retailers?

Mr. MERCKER. No, sir; I do not, Mr. Myers.

Mr. MYERS. You are not aware of this?

Mr. MERCKER. No. I know that many of our growers—our growers are generally small, although we do have the biggest hothouse, greenhouse vegetable grower as the executive vice president of our group—but I have not heard from them any complaints to a great extent of that kind. They evidently watch their credits rather carefully.

Mr. MYERS. By your testimony you say your people want the PACA to continue and be strong.

Mr. MERCKER. Yes.

Mr. MYERS. They are not asking to include more, then?

Mr. MERCKER. No.

Mr. MYERS. Thank you. That is all.

Mr. FOLEY. Mr. Jones?

Mr. JONES. No questions, Mr. Chairman. Very good statement.

Mr. FOLEY. The next witness will be Mr. Henry Bison, Jr., general counsel, National Association of Retail Grocers, Washington, D.C.

#### **STATEMENT OF HENRY B. BISON, JR., GENERAL COUNSEL, NATIONAL ASSOCIATION OF RETAIL GROCERS**

Mr. BISON. Thank you, Mr. Chairman, and members of the subcommittee. My name is Henry Bison, Jr. I am general counsel for the National Association of Retail Grocers with offices in Washington, D.C. I appear here today on behalf of that association representing local foodstore operators.

The association is organized as a federation of over 100 State and local associations of food retailers, and has approximately 40,000 members.

I sincerely thank the members of the subcommittee for allowing me to appear at this hearing to present the association's position on

H.R. 9857. This measure proposes to authorize an increase in the annual license fee under the Perishable Agricultural Commodities Act, from \$50 to \$100. The bill also would raise the retail exemption in section 1(6)(b) from \$90,000 to \$100,000.

To dispel any possible misconception on our position, let me make it clear we do not seek repeal of the Perishable Agricultural Commodities Act; we do not urge any weakening of its substantive provisions requiring licensed purchasers to abide by their contract and pay for PACA merchandise they ordered. The act's primary purpose is to protect growers and shippers by providing Government enforcement of contracts in the marketing of fresh and frozen fruits and vegetables, especially against buyers of PACA commodities who refuse to pay their bill, unjustifiably reject a shipment, or engage in other alleged contract violations.

With one minor exception, the entire cost of administering this Government program is met through annual license fees paid by various dealers in PACA commodities.

An important feature of the present system of financing the administration of the act is that a uniform fee is provided. Every firm required to purchase a license pays the same fee. The volume of business in PACA commodities handled by a licensee is not considered in setting the amount each firm must pay. Many retailers, and especially relatively small retail licensees, most of whom are represented by the National Association of Retail Grocers, object to this. They firmly believe that the law requires them to pay for a service they do not want or need. Their view is that in this respect the law is unfair and inequitable.

To remedy the inequities involved in the present fee system, we recommend that H.R. 9857 be amended by adding the following provision on page 2, line 3.

SEC. 4. The first section of such Act (7 U.S.C. 499a) is amended by adding at the end thereof the following new paragraph:

"(11) No person buying any perishable agricultural commodity solely for sale at retail shall be considered as a 'dealer' in respect of any such commodity in any calendar year, provided that not less than 90 percent of his purchases of such commodity in such year are from one or more licensed wholesale suppliers. For the purpose of this subsection, the amount of such purchases shall be determined on the basis of net invoice cost to the retailer. A wholesale supplier shall mean a person whose sales of perishable agricultural commodities are primarily to retailers, and who is recognized as a wholesale supplier in the industry."

The purpose of this amendment is to exempt from coverage under the Perishable Agricultural Commodities Act those food retailers who purchase almost all of their fresh and frozen fruits and vegetables from one or more wholesalers licensed under the act. Such wholesale suppliers include independent service wholesalers selling fresh produce to retail customers, frozen food wholesalers, and cooperative and voluntary groups selling fresh or frozen fruits and vegetables to retail distributors.

The proposed amendment would not exempt large retailers who perform the wholesaling function in the purchase of their fresh and frozen fruits and vegetables. Such retailers purchase a large part of their produce requirements directly from producing areas for shipment to their central warehouses. In so doing, they bypass wholesalers where their stores are located.

Retailers exempt under the proposed amendment would make the vast percentage of their purchases from wholesale suppliers licensed under the act. Retailers having appreciable dealings with growers, growers' agents, commission merchants, and terminal markets would not qualify for the exemption.

We believe that the proposed amendment is not in conflict with the purpose of the statute. It can hardly have been the intent of Congress in passing the Perishable Agricultural Commodities Act to require a license for the enforcement of contracts made between produce and frozen food wholesalers and their retail customers. In the event of failure on the part of a retailer to pay his bill, or to live up to his contract with his wholesaler, there is certainly no need for a Federal license.

Retailers purchasing their fruits and vegetables from licensed wholesalers in purely local transactions were not the concern of Congress when it passed the act 39 years ago. These retailers are neither large direct buyers nor direct receivers of shipments from producing areas.

Retailers relying on licensed wholesale dealers for the vast percentage of their fresh and frozen fruits and vegetables should not be licensed under the act at all. Such application of the law serves no useful purpose. Enforcement of contracts between retailers and wholesalers is not a proper function of the Federal Government.

We respectfully suggest that our proposed amendment is reasonable and not in conflict with the basic purpose of the act, or its efficient administration. We ask that the pending bill be amended as suggested.

Mr. Chairman, I would like to add a few comments as a result of the testimony here this morning.

I am going to refer to a survey taken by the Department in connection with PACA licensees on this question of variable license fees. This survey was referred to by Mr. Hedlund this morning. And I would like to point out a few of the findings as a result of this survey.

First of all, the Department asked each licensee, not just retailers but market receivers and shippers and brokers and all of them, to indicate the volume of their purchases, annual purchases of PACA commodities in the year 1968—I believe it was 1968—it might have been an earlier period, but anyway, it was an annual period, very recently.

We find as a result of this analysis made from returns of these surveys that 78.8 percent of the retailers licensed under this law purchased less than \$500,000 of PACA commodities in the year, so that 78 percent of those retail licensees are what you might consider, and it is a variable term, small or medium size. Most of the retail licensees are small.

Sixty-nine percent of the total licensees, every one, are in the first three categories of volume, that is, purchased less than \$500,000 a year. Almost 70 percent of the people licensed under this law purchased less than a half million dollars worth of produce in a whole year, and this is fresh and frozen. So, you can see there are many small operators under this law.

Now, one other comment. Retailers licensed under the act numbered in 1968, 3,409. That is the precise figure given me by the Department. The total licensees under the act are 19,460. So actually, all retailers licensed under the act amount to about 17 percent, total licensees.

There was a decrease from 1962 when the \$90,000 exemption was not in the law to 1968 of 723 retail licensees, a decrease. This amounts to a decrease of about 15 percent for retailers. But the decrease for all other licensees, other than retailers and other than frozen food brokers, was more substantial than that and the exemption, the \$90,000 exemption did not apply to these. These are what we referred to as commission merchants and receivers and shippers, and so on. There the decrease is 21 percent and I think this supports Mr. Hedlund's statement that the decrease in licensees is due to the mergers and consolidations and business getting larger rather than any result from the \$90,000 exemption being added to the act as a result of the 1962 legislation.

I think I have finished my direct remarks at this point and I will be glad to respond to any questions.

Mr. FOLEY. Thank you very much, Mr. Bison.

Mrs. May?

Mrs. MAY. Mr. Bison, if all exemptions were removed from this bill and all retailers were included under it, and then you applied the suggested amendment having to do with volume purchased, I believe, what would be the effect on the retailers? How many then would come under the purview of the act that would require licenses? Have you any way of figuring that out?

Mr. BISON. Mrs. May, it would be very difficult. If that were done, then the exemption would apply depending on the method of your purchase, whether you dealt through a wholesaler or not, rather than the amount of your purchase. It is our belief, and I think anyone acquainted with the industry would agree with this, that most independent operators and most small chain operators in retail food buy their PACA commodities through wholesalers rather than on the primary markets and they certainly do not have agents, buying agents, in the producing areas.

Mrs. MAY. Could I stop you just a moment? You say that most of the retailers, small, medium, large, buy their products—say that again.

Mr. BISON. Most of the independent retailers, most of the small chain retailers, buy almost all, and I say almost all, and I will explain that in a minute, almost all their PACA commodities from wholesalers. It is more efficient for them, Mrs. May, to buy—

Mrs. MAY. Do you have the figures on that because I have seen figures—could I ask Mr. Hedlund, is that a fair statement or has your Department gone into that, Mr. Hedlund?

Mr. HEDLUND. I cannot argue with the statement, Mrs. May, because I simply do not know.

Mrs. MAY. Have you done a study on this, Mr. Bison?

Mr. BISON. No, we have not, Mrs. May. It would be very difficult when you are dealing with over 200,000 retail food outlets. It would be extremely expensive.

Mrs. MAY. Actually, in other words, what you would have to do is, if you dropped an exemption for anyone, then you would have to review entirely what their status was and what their buying habits were and then decide, if you applied an amendment or an approach like yours, whether they came under the purview.

Mr. Bison, you heard the Department's statement this morning in which Mr. Hedlund, representing the Department, says that—in

referring to the suggestion that there is no need for retailers buying from licensed wholesalers to be covered by this act, his statement said in rebuttal of that:

Without such coverage the protection which it offers would be most inadequate. For example, complaints often are filed under this Act between two licensees located in the same city involving commodities which have originated in other states. There appears to be no more justification for exempting from license a retailer who happens to buy most of his produce from a licensed local wholesaler than there would be to exempt wholesalers who may buy a substantial part of their produce from licensed local car lot receivers.

Would you comment?

Mr. Bison. Well, I think that we should go back to the primary purpose of the law and that is—this has been sustained or has been mentioned in many court decisions, that the primary purpose of the law was to protect the growers, the shippers, the commission merchants of very perishable commodities shipped many, many miles across the country where the buyer might reject the shipment or may accept the shipment and then not pay, in which case the grower many miles away from that market would have difficulty in collecting on that. And this was the problem that brought this law into being. And I think as we go through some over 30 years of development of this law we have to keep going back to what its purpose was.

Mrs. May. In the practical application of the law, have there not been changes and more emphasis on other important facets of it as the need for policing the industry and that sort of thing with different cases has arisen?

Mr. Bison. Well, I think, Mrs. May, that despite the changes that have taken place in the industry, and mainly these are more concentration at all levels, this still makes the purpose of the law—and I say we support it; we do not oppose the law in any respect—this makes the purpose of the law under the congressional policy perhaps important or even more important than it was 39 years ago, I do not know. But it does not change the prime motivating force behind this law and that is to protect the growers and the shippers, and so on.

Now, here in the wholesale transaction, a local wholesale transaction in the same market, in the same market area, between a wholesaler and a retailer, if that retailer does not pay his bill to his wholesaler on PACA commodities, then the Government can be brought in and this procedure can be developed. If he does not pay his bill in connection with dry groceries, it does not apply. And if he does not pay his bill in connection with any other commodity it does not apply.

Now, there would seem to be no real justification for licensing a retailer in order that the wholesaler would be protected. Now, the wholesaler has many, many ways of collecting from a local retailer including contract enforcement in the local court, and it just seems to me that it is stretching the concept to follow Mr. Hedlund's statement. I do not think it is based on sound reasoning.

Mrs. May. Well, I think what I was—I was just trying in an honest, objective way, Mr. Bison, to get at the various facets in this question that you have raised. The act originated some 30 years ago and certainly I quite agree what its original purpose was. It does seem to me that the many changes that have taken place in the whole food area, distribution and marketing, have had an effect on the kind of problems that come under the PACA purview.

I guess I could say it more simply this way. In the original days it was harder, it is true, to get at grocers, suppliers, and others in far-off States. So, if we followed your rationale, maybe there would not be any need for the—there would not be as much need for the PACA today because we also have much greater and faster communications, representatives of law, reciprocity between courts, so that collecting a bill from, let us say, my State of Washington over to somebody here in Washington, D.C., I think is probably a lot easier today than it was 30 years ago.

Mr. BISON. But it is more expensive.

Mrs. MAY. Everything is more expensive.

That is all, Mr. Chairman.

Mr. FOLEY. Mr. Vigorito?

Mr. VIGORITO. No questions, Mr. Chairman, at the present time. I have to study this amendment in more detail before I can take a position on it.

Mr. FOLEY. Mr. Vigorito reserves his time.

Mr. Myers?

Mr. MYERS. Mr. Bison, according to your statement here you feel that the original concept or the intent of the PACA was as a bill collector or guaranteeing contract payments, and I think this might be a part of it, but I thought it was to resolve differences relative to quality and product. I thought this was really the intent of the PACA. It allows a method of resolving differences which could amount to guaranteeing contract payments, and so forth, but according to your amendment, if I understand it, the retailer would be protected and use the advantage of the act without having to pay his fair share. You still would be protected. What you are saying in the presentation here is that the wholesaler would be licensed and he has a remedy then going through the act; is that correct?

Mr. BISON. No; it is not, Your Honor. We are asking that the retailer not be licensed there, therefore, he would have no right to even file a complaint. The testimony earlier this morning indicated, that where a nonlicensee would have no right to file a complaint—

Mr. MYERS. Anybody can file a complaint under the act, it is my understanding. As long as one is licensed he comes under the act and if I have a grievance, if I have a problem, my remedy is to go through the act and you as a retailer or your association members even though they are not members, with the wholesaler. Am I wrong here? You say they would not have the right?

Mr. BISON. It is my understanding, now—

Mr. MYERS. Could someone here in the room—Mr. Hedlund?

Mr. FOLEY. Mr. Hedlund, would you clarify that?

Mr. MYERS. A nonmember retailer, does he have a remedy through the act if he is not a member but the wholesaler he is doing business with is a licensee of the act?

Mr. HEDLUND. Yes; he may file a claim against the licensee.

Mr. MYERS. In effect, then, what your amendment would do, it would give protection to the retailer under the act without him having to pay his fair share, is that correct?

Mr. BISON. Let me state this to you, sir. The retailers I represent here have no interest in filing any complaints against their wholesaler with respect to the quality of merchandise that is delivered to them by the wholesaler through any PACA arrangement.

Mr. MYERS. None at all? Zero percentage? Is that what you would say?

Mr. BISON. Let me finish. If a wholesaler receives a shipment from his—I mean, if a retailer receives a shipment from his wholesaler which is not in accordance with his understanding, his recourse is to the wholesaler. He deals with this wholesaler day in and day out, week after week, year after year, and all he would have to do and all he would do would be to take his complaint up with his wholesaler which can be amicably arranged. I doubt that any retailer, the people I represent, would even think of going through a PACA arrangement when he is dealing with his own wholesaler in a local community. He would merely talk with the warehouse manager and say the shipment of bananas you sent to me today are not up to their usual standards and there would be an arrangement made where there would be an accommodation reached.

Mr. MYERS. What would the courts use to establish any assurance—what law would they go to?

Mr. BISON. This would be strictly under the law of contract.

Mr. MYERS. What is the basis of the contract, guaranteeing quality?

Mr. BISON. It would depend on the contract but it rarely goes to a court.

Mr. MYERS. No. I mean——

Mr. BISON. You do not go to court unless you are really at your wit's end on the matter and it is a very substantial claim involved, too. You always arrange this with your wholesaler but what I want to point out and what is very important, today in food distribution the retailer and the wholesaler are a team. They work together. Their whole future depends on each working with one another. The retailer is the wholesaler's customer, the wholesaler is the retailer's supplier. Their success in a very competitive market, extremely competitive market, depends on them both working together and I cannot imagine when a dispute would arise over the quality of a shipment where the retailer would go through a PACA.

Mr. MYERS. You do not know of any of your members in your association using the remedy that PACA provides?

Mr. BISON. No; I do not.

Mr. MYERS. Not one case?

Mr. BISON. No. And, Mr. Myers, if you wanted an amendment which would prohibit a nonlicensed retailer from filing a complaint——

Mr. MYERS. No. I am asking you——

Mr. BISON (continuing). We would welcome it. If you want to prohibit a nonlicensed retailer from filing a complaint, fine. We would support that amendment.

Mr. MYERS. You supported the act. Why would you support the act at all if you do not use it?

Mr. BISON. Well, we feel that there are reasons for this law when it comes to protecting the growers and the shippers and the commission merchants who are shipping a perishable product many, many miles from their source, to buyers in faraway places. We are not opposed to that principle at all.

Mr. MYERS. But you do not want any protection for your retailers under this act.

Mr. BISON. We do not want any part of this law. We just want to be out. If you would exempt us and let us never file a complaint, we would love it.

Mr. MYERS. Do you speak for all retailers or does this happen to be your association's position? Do you buy from your own source of wholesalers like the Independent Grocers Association who use their own suppliers, their own wholesalers? Is that the way your association operates primarily or do you buy from independent wholesalers wherever the store happens to be located?

Mr. BISON. Our members would buy from independent wholesalers. They would buy from their cooperative warehouse. They would buy from their voluntary warehouse. They would buy from frozen food wholesalers but they all buy most of their products through some local wholesaler who is a specialist in handling very complex problems dealing with perishable commodities and he knows this business better than they do, so he does the job and he buys from the wholesalers, wholesalers of all kinds.

Mr. MYERS. Well, of course, the effect would be, you use a figure here of 3,409. If you eliminate from this fund that is now used \$50 what they are now paying would be a loss of approximately \$170,000 and this would have to be made up some place so what you do is eliminate the retailer and put it all on the wholesalers and growers backs. That is my understanding. Is that right?

Mr. BISON. As I say, I do not know how many retailers would be eliminated.

Mr. MYERS. You said 409 in your statement, 1968.

Mr. BISON. No. I said 3,409 are now licensed.

Mr. MYERS. Well, that is—\$50 is what they are now paying. That would be \$170,000 that would be eliminated under—

Mr. BISON. I do not know—

Mr. MYERS. Some of it.

Mr. BISON. All of them would not be eliminated. Certainly. That most certainly is true.

Mr. MYERS. A large percentage possibly.

Mr. BISON. A large percentage would be. I would have to in all fairness say I think most retailers today in terms of number buy through wholesalers rather than on primary markets, and go into growing areas. Only the large retailer has the resources and skills to be able to go through growing areas through their own agents and deal with receivers, et cetera. You would have to be a pretty large operator to do that.

Mr. MYERS. One last question. You feel, then, in your judgment that the retailer today, 3,409 of them are paying \$50 for a license. This has been used as a source of revenue by this fund rather than any help to the retailer whatsoever. Would this be yes or no?

Mr. BISON. Yes. I would say it this way, that the problem is that the retailers I represent are being required to buy a license and they do not feel, rightly or wrongly—it depends on your point of view—but they do not feel they get anything out of it.

Mr. MYERS. You think it is taxation without representation.

Mr. BISON. Yes; and if the produce industry members want this law, and they are welcome to it, let them pay for it. It is their law and their protection and they are getting something. Why do they not pay \$10 more a year?

**Mr. MYERS.** And the 2,272 reparation complaints filed last year, you do not know of any of them from your association?

**Mr. BISON.** Oh, no. That does not mean there are not any, Mr. Myers. I might say that just because a complaint is filed, of course, does not mean it is sound and many of them are dismissed, you know, on the grounds they are not valid.

**Mr. MYERS.** I yield to Mrs. May.

**Mrs. MAY.** Mr. Chairman, if I may, I just want to put one question.

Mr. Bison, this act, as it has been administered for the past 30 years covers all the commission merchants, dealers, brokers that come under it, all engaged in interstate or foreign commerce, and I assume most of them, at some point or other, have some contact with all the retailers.

Now, this prohibits all these people that come under the act to engage in certain unfair trade practices which include rejecting or failing to deliver in accordance with the terms of the contract, forbidden to dump or discard or destroy any products received on consignment without reasonable cause, if they fail to pay promptly, if they fail to perform any specification of duty arising out of their contract, again without reasonable cause. They come under the penalties of this act if they misrepresent or misbrand character, kind, grade, quality, size, pack, weight, condition, maturity, and so forth and, of course, fail to maintain records and accounts.

Now, it seems to me in the very closely interrelated mechanizations of the whole food producing and marketing system we have in this country today that whether the retailers of this country come under the act or not, they are receiving protection in getting better merchandise and good merchandise which is important for their customers at the retail level, whether they are paying a license or not. Would that be a fair statement?

**Mr. BISON.** Well, Mrs. May, I suppose it depends on your point of view but we do not believe that is so and let me explain why.

We believe that the law is essentially a vehicle in which the Government's power is used to enforce contracts, to require that contracts be abided by. And this is very unusual so far as—I do not know of any other law like it and it covers even local transactions where the product has been shipped across the State line at any time, and our feeling is again stating that the real purpose of the law was to protect the growers and shippers far away from the ultimate buyer, but when it comes to a local transaction and day-to-day transaction between a retailer and his own wholesaler in the local area, that this goes beyond the concept and purpose of the law and there is no reason for licensing retailers that buy their produce that way.

**Mrs. MAY.** In other words, you are saying you do not think that any retailer in the United States gets any value as to better quality merchandise at all under this act when it comes to fresh fruits and vegetables.

**Mr. BISON.** I would say this. I think as far as the quality of merchandise they receive, this is the result of more efficiency in the produce industry, of their efforts to make a better product so they can approve their sales.

Remember that the produce people are competing against other food people. In other words, when you go into a food store, you can

buy fresh produce or you can buy some other kind of food and I think that the progress made in the produce industry, and it has been a great deal, is the result of competition in the food industry where you are just trying to convince the homemaker to buy that product.

Mrs. MAY. I would not deny that at all, as you well know, Mr. Bison. I certainly think that is true and it is very important to the whole food industry, but I still am trying to understand your philosophy.

Now, you have said you are not against the act, you do not want it repealed. So, I assume the retailers must see some value some place in it. Over 30 years there have been a number of reparation cases. There have been a number of cases that have been prosecuted. I assume this means that conditions that are bad for all the food industry have been corrected, or people who really have not been a credit to the food industry have been forced to stop what we call unfair trade practices. In my viewpoint that does seem to put an umbrella of protection over food retailers.

Mr. BISON. Well, may I add this, Mrs. May, that there are other laws that protect principals in this industry and that is under the Federal Trade Commission. The FTC enforces the Clayton Act and also the Federal Trade Commission Act and they have even guides dealing with produce and if this law were repealed, which we are again not recommending, there would be other Federal laws that would take care of misrepresentation and other deceptive practices. Of course, these would have to be—

Mrs. MAY. I might say from the viewpoint I hold personally, I would hate to be in the perishable food industry and have to wait for as long as some businesses today wait for the FTC to rule or take up their cases. But that goes into another matter I feel very strongly about. We do have very good laws on the books that are not enforced as virorously as I would like to see them in the FTC.

That is all, Mr. Chairman, and I am sorry I took so much of your time.

Mr. FOLEY. Mr. Jones?

Mr. JONES. No questions.

Mr. FOLEY. Mr. Bison, I understand that you feel the retailer does not have any effective use of the act and thus the charge of a license fee against retailers is a burden without compensating service from the act.

Mr. BISON. Where the retailer buys most of his produce from his local wholesaler.

Mr. FOLEY. Turning the question around, I would like to ask whether other members of the industry feel that the retailers need to be subject to the enforcement of the act. You say that you do not know of any of your own members who have used the P.A.C. Act. Has the act been used against them?

Mr. BISON. I do not know. I do not know, Mr. Chairman, whether it has. It would not surprise me that among the many members we have, somebody might have had a complaint filed against him. It is quite possible this happened.

Mr. FOLEY. One of the problems with the P.A.C. Act is that enforcement of this act is through a licensing system. Unless retailers are included, they would not be subject to being proceeded against under

the act, and this requires under the present law payment of a fee. It may not be a desirable thing to have to pay a fee in order to be subject to enforcement. Perhaps this is one of the factors present.

Mr. BISON. Your Honor, I do not believe, and I say this advisedly, that wholesalers as such are urging that their retail customers be licensed under PACA so that when and if their customer does not pay his bill, they can proceed through the Government, Department of Agriculture, to collect that bill against their own retail customer. I do not think the support for that licensing provision comes from wholesalers who are dealing with our members. I think it comes primarily from growers and people of that type. I do not think it comes from wholesalers and I certainly do not think they would even use it against the retailer themselves because these people are in constant daily business transactions every day of the year.

Now, I doubt that the wholesaler would even file a complaint.

Mr. FOLEY. In the case of a growers situation, or a commission merchant, he would not be able to proceed against the retailer unless the retailer were in fact licensed.

Mr. BISON. Mr. Chairman, there would be no direct—under the proposed amendment there would be no privity of contract between the grower and the retailer because he would be buying his merchandise from the wholesaler.

Now, the wholesaler is licensed and if the wholesaler did not pay his bill to the grower, then PACA proceedings could be used.

Mr. FOLEY. I am sorry. I understand your amendment dealt with a certain percentage—

Mr. BISON. Now, 90 percent, yes, it did. It would allow a retailer to buy 10 percent of his PACA requirements other than through a wholesaler. The reason we added that, Your Honor, was simply this. There are times when a retailer will buy a truckload of tomatoes from a local farmer or from some local source, or watermelon. This is a good example. And we did not want the situation to happen like that where you put the retailer under the license provision because he bought some watermelon from me. We are not wedded to the 90 percent. You can change that anyway you want. But that is the basis for that suggestion.

Mr. FOLEY. Under that exemption or exception for the 10 percent it is theoretically possible, at least, that a direct grower or commission merchant might be denied enforcement.

Mr. BISON. I admit that.

Mr. FOLEY. Thank you very much, Mr. Bison. We appreciate your appearance today and your testimony.

Mr. BISON. Thank you.

Mr. FOLEY. Mr. Murray?

Mr. MURRAY. I think it would be of interest to the subcommittee that in looking through our records, we found that every member of the subcommittee that handled the PACA amendments in 1962 is now gone and the whole subcommittee has been completely replaced.

I would like to bring out for the record some of the things that happened in 1962 and Mr. Bison will remember, too.

In 1962 when the old exemption which was 21 days, a ton of produce per day per year for a retail grower exemption was in effect, that was eventually changed to the \$90,000 rule which is now the exemption.

What comparison is there in degree of coverage between the old 21-day rule and the \$90,000 rule? How many more retail growers were brought under it by that change?

Mr. BISON. Mr. Murray, if you will recall, George Green testified for the Department in 1961 on the pending bill at that time, and I was just reviewing the testimony last night and he stated then that 95 percent of all retailers were exempted under the previous restriction. You know. One ton or more per day, 21 times or more a year. He said 95 percent were exempt.

I was interested in Mr. Hedlund's comment this morning here that I think he had it up to 97 percent. So, we gained 2 percent there in 9 years.

I really feel we are playing with figures because I do not think any of us knows really what percentage are exempt and what are covered because it is a very difficult thing. You have got a complex industry. You have got many, many thousands of food retailers.

Furthermore, whether you are exempt or not depends under the \$90,000 rule, Mr. Murray, on your mix. You could be very heavy in fresh and frozen PACA commodities. In other words, you might feature that in your store and if you are in certain areas of the country where this is a very popular commodity, you could find a rather small store being covered. So, it is extremely difficult to take all these variables and come up with a generalization and I would be very reluctant.

Mr. MURRAY. You would answer the question and say there was not a substantial difference in the scope of the coverage either way, 25-day rule or the \$90,000 rule. So it is about the same in total exemptions.

Mr. BISON. About the same. It was not a substantial difference, no, and as I say, there has been a decrease in the number of licensees since 1962, but this is not the result primarily of any change in the law but more a change in economics.

Mr. MURRAY. Just one other thing for the record. The amendment that you are now proposing is substantially the same, I think, as was proposed and considered by the committee at that time, correct?

Mr. BISON. It was proposed and considered and rejected. I might say that one thing—

Mr. MYERS. Nobody is here now.

Mr. BISON. Maybe I get A for effort or consistency or whatever you want to say, I do not know, but the one thing we did offer this time that we did not last time, and this comes through hindsight, was the definition of a wholesaler. I spent many hours debating that and I thought we will button this one down. But we are back again 8 years later still asking for the same thing.

Mr. FOLEY. Thank you, Mr. Bison. You have done a very good job in presenting the views of your association.

The next witness will be Bernard J. Imming, secretary, United Fresh Fruit & Vegetable Association of Washington, D.C.

#### STATEMENT OF BERNARD J. IMMING, SECRETARY, UNITED FRESH FRUIT & VEGETABLE ASSOCIATION

Mr. IMMING. Thank you very much, Mr. Chairman. I have a brief statement and a few other remarks I might make at this time.

The United Fresh Fruit & Vegetable Association is a national organization representing all factors of the production and marketing

of fresh fruits and vegetables, with about 2,500 member companies. Our members handle about 80 percent of the fresh fruits and vegetables which are marketed commercially in the United States.

We appreciate this opportunity to appear here today, and to endorse H.R. 9857. We respectfully urge favorable action by this committee.

In addition to our own testimony in favor of the proposed legislation, we have been authorized to speak favorably in its behalf by the Florida Fruit & Vegetable Association headquartered in Orlando, Fla.; the Western Growers Association, Los Angeles, Calif.; and the Texas Citrus & Vegetable Growers & Shippers Association, Harlingen, Tex. We have been told that these organizations have communicated their positions by letter and telegram to the chairman of this subcommittee and to other Members of the Congress. We are also authorized to speak for the Idaho Grower Shippers Association of Idaho Falls, Idaho, but we understand that the Idaho association passed a resolution favoring an increase in the statutory license fee ceiling to only \$75 per year. At least the principle is recognized there of increasing the statutory ceiling.

Our association consistently has supported the Perishable Agricultural Commodities Act and the amendments thereto. We have repeatedly stated our pride in the fact that this statute from the beginning is the result of an industry request, and is uniquely self-supporting.

The bill under consideration has two major objectives, and I would like to comment briefly on each.

First, it is obvious that increasing costs of operation, chiefly in the nature of increased civil service salary schedules, make it imperative that provision be made for the necessary revenue for the administration of the act.

It is our understanding that there is no immediate need nor intention to raise the annual license fee, but the experience of recent years and inexorable inflationary pressures require providing for increased funding through license fee increases when and if required. This would be accomplished by raising the statutory ceiling on license fees, as H.R. 9857 provides.

With regard to broadening the exemption from license for certain retailers and frozen food brokers from \$90,000 to \$100,000, the United Fresh Fruit & Vegetable Association supports the provisions of the bill, but somewhat reluctantly. We did not favor these exemptions in the first place.

We now support the increase of \$10,000 in the exemption level, but only because of the generally increasing price levels which seem to be one of the results of the inflationary times in which we must live and do business. We oppose any further extension of the exemption from licensing under the Perishable Agricultural Commodities Act, and we are convinced there is no realistic argument in favor of exemptions beyond the \$100,000 level. It is our understanding that reliable estimates indicate that only a small number of food retailing firms would be subject to license under the proposed amendments, less than 2 percent of the total in the food retailing business. The benefits of the act are applicable to all who are involved in any substantial degree in the marketing of fresh and frozen fruits and vegetables in commerce.

Now, at this point I would like to depart from my prepared statement and add a few remarks, if I may, Mr. Chairman.

We have had little time to consider or analyze the amendment which Mr. Bison has proposed, but I do have a few thoughts that might be useful in the matter at this time.

In the first place, I think that there is substantial evidence as a result of the intention of the Congress in the first place and of experience over these more than 30 years of existence of the PACA that this is not intended for growers and shippers alone. The consistent Mr. Bison—gee, he had better ask some of his good retailers who make up the governing organizations of the retail cooperatives whom he does represent because I sort of imagine that there might be just a few complaints under the PACA initiated by some of these organizations. But be that as it may, I think it is important to recall a couple of things from the testimony of Mr. Hedlund a few minutes ago.

I believe Mr. Hedlund said:

It is sometimes suggested that there is no need for retailers buying from licensed wholesalers to be covered by this act. Without such coverage—

Mr. Hedlund continued—

the protection which it offers would be most inadequate. For example, complaints often are filed under this act between two licensees located in the same city involving commodities which have originated in other States. There appears to be no more justification for exempting from license a retailer who happens to buy most of his produce from a local wholesaler than there would be to exempt wholesalers who may buy a substantial part of their produce from licensed local carlot receivers.

I would like to make another point. In 1962 when the Congress considered the amendment of the act on a similar basis to this hearing at this time, Alan Rains, who was our executive vice president, appeared before the subcommittee and he made this statement which I think is in point. Mr. Rains said:

I think it ought to be borne in mind that probably the small licensee should be more interested in the protection he is afforded by PACA than the larger licensee for the simple reason that by virtue of his smallness and likely lack of financial strength he is hardly in a position to retain legal counsel in order to protect his rights in the case of a controversy involving terms of the contract, goods delivery, or a variety of other questions that arise regularly in the course of trading in these highly perishable commodities.

A PACA licensee, large or small—

Mr. Rains said—

is as close to good, sound advice as his telephone because all he needs to do is call PACA either in Washington or one of the field offices to get advice or an opinion from a qualified representative.

Mr. Rains said, and I do not know whether this is still an accurate statistic but I think it is reasonable:

PACA handles some 8,000 informal inquiries such as this each year, with the result that most of the misunderstandings and disputes are settled amicably. It would seem, I believe, that the reasonable license fee that is charged is indeed a small amount for such a valuable service.

I might recall Mr. Hedlund's statement, too, which would seem, well, seem to raise some doubt about whether retailers value or use the PACA. After all, in the last 3 years, about 189 retailers were involved, if I recall the figure exactly, in some sort of reparations proceedings. Some of these were initiated by retailers. Some were initiated by the other parties to the contract.

Finally, I would like to raise this question. What is a small retailer or a small licensee? Let us take the proposed exemption of \$100,000 now in purchases of fresh and frozen food and what does this represent? Well, this represents, and this is according to figures, the best available, of supermarket operators these days, \$100,000 in purchases represents about, well, \$135,000 in sales of the PACA-covered commodities. It does indeed represent a retail supermarket doing about \$1.5 million in business total during the year.

Now, how big a business is that? How do you measure bigness? Well, there are lots of ways to do it but I offer these figures just for consideration.

The average or typical supermarket today has a net profit of 1.75 percent, indeed a small minimum amount for doing business, but it also happens that in the fresh and frozen foods departments, the net profit runs much more than that, to about 6½ percent. OK. Take this average or typical supermarket operator now who would be—the minimum-sized man who would be covered under the bill. He would have a net profit from produce alone and frozen foods alone of \$8,500 in the year, net profit. Now, that is not markup. That is net profit, the kind you can spend. His net profit from that one store alone typically is 1.75 percent of total sales or a total of \$26,250. \$8,500, say, from fresh and frozen foods, \$26,000 plus from his whole store.

These covered commodities are important to the profitable operation of his store. The difference, of course, in the level of profit has to go with the perishability of the product, you know. The general rule of thumb, and an appropriate one, is the more perishable the product, the greater the markup. If he is a good, sound retailer he does a good job of handling it and realizes a little more net. The fact is he does.

Now, under the proposed amendment, and again I have not had time to think about this too long, but what about the retailer, the member of Mr. Bison's association who has, say, three, six, 10 retail outlets? He is an independent supermarket operator. Let us take the fellow who has just five stores, and there are many who have more than one, you know, who are members of his organization, I am sure. But let us say five. OK. If he has five typical supermarkets, operates five typical supermarkets, he buys a half million dollars worth of produce under this proposed bill. He also will realize a net profit in 1 year of operation of some \$42,500 just from the covered commodity, his total net profit, and I do not deny it to him at all. More power to him. But his total net from his whole store's operation is \$130,000.

What about these retailers? Should they be exempt? Indeed, they are volume purchasers of the commodities covered under this act and indeed, it seems to me, that the very small annual license fee which might go up to \$100 sometime in the indefinite future is pretty doggone good insurance, a pretty doggone good investment to protect himself in his business.

Finally, I would like to return to my statement and the conclusion.

There really is no obvious need to review the provisions of the act or the proposed amendments further here. Again, we urge you to report favorably on H.R. 9857. The fresh fruit and vegetable industry,

all factors of it, needs sound administration of the Perishable Agricultural Commodities Act, and this can be realized only when it is adequately financed.

Thank you for the privilege of expressing our views here today.

Mr. FOLEY. Thank you, Mr. Imming.

Mrs. May?

Mrs. MAY. No questions.

Mr. FOLEY. Mr. Jones?

Mr. JONES. No questions.

Mr. FOLEY. Mr. Myers?

Mr. MYERS. I want to go back to one statement here by Mr. Imming. I think he excellently presented to the committee that all retailers are affected somewhat by PACA. I would like to go back and ask for a statement from Mr. Hedlund. I ask consent that he might give us information on the number of retailers in the 2,272 reparation complaints that you say you handled last year. How many retailers are involved here?

And second, the 9,800 requests that you handled last year, could you give this committee the number of retailers involved here? At a later date. You do not have to do it today. Just supply it to the committee. I ask consent for that.

Mr. FOLEY. Mr. Hedlund, could the Department provide that information for the record?

Mr. HEDLUND. Mr. Chairman, we will get that information if it is at all possible to do so.

Mr. FOLEY. Fine. Without objection, so ordered.

Thank you very much, Mr. Imming. We appreciate your appearance here today.

(The Department subsequently submitted the following information:)

U.S. DEPARTMENT OF AGRICULTURE,  
CONSUMER MARKETING SERVICE,  
Washington, D.C., July 22, 1969.

Hon. THOMAS S. FOLEY,  
*Chairman, Domestic Marketing and Consumer Relations Subcommittee, Committee  
on Agriculture, House of Representatives.*

DEAR MR. CHAIRMAN: At the hearing of the Domestic Marketing and Consumer Relations Subcommittee on July 17 to consider H.R. 9857, it was requested that the Department of Agriculture furnish additional information on the number of reparation complaints involving retailers handled under the Perishable Agricultural Commodities Act during fiscal year 1968 and the number of inquiries received from retailers concerning their operations subject to the Act.

In my direct testimony, I indicated that a total of 2,272 reparation complaints were handled by the Department during fiscal year 1968. Of these, 54 directly concerned retailers either as complainants or as respondents. The number of reparation complaints involving retailers has been relatively uniform in recent years as there were 59 such complaints handled in fiscal year 1969 and 76 in fiscal year 1967.

In fiscal year 1968, we received more than 9,800 requests for advice from members of the industry seeking assistance under the Act, mostly with problems concerning marketing contracts. We do not attempt to maintain a record of type of business conducted by those who make these requests. Unfortunately, therefore, we have no way of indicating how many were received from retailers.

During the course of the hearing, a question was raised regarding the impact of the change in retailer exemption brought about by the 1962 amendment to the Act. Prior to 1962 retailers were liable for PACA license only if they purchased perishable agricultural commodities in lots of one ton or more at least 21 times during the year. Based on a survey of retail food firms, it was estimated that this

exemption, if converted to a dollar equivalent, would have resulted in all retailers purchasing less than \$30,000 of perishable agricultural commodities in a year being exempt. The 1962 amendment, therefore, had the effect of increasing the retailer exemption from \$30,000 to \$90,000. As a result, the number of retailers licensed fell from 4,132 in October 1962 to 2,997 one year later, or a net decline of 1,135 licenses.

Sincerely,

FLOYD F. HEDLUND,  
*Director, Fruit and Vegetable Division.*

**Mr. FOLEY.** The next witness will be Mr. Ben R. Lacy, III, Front Royal, Va., president of the National Apple Institute.

**STATEMENT OF BEN R. LACY III, FRONT ROYAL, VA.,  
PRESIDENT, NATIONAL APPLE INSTITUTE**

**Mr. LACY.** Mr. Chairman, members of the committee, I am Ben R. Lacy, III. I am a grower, packer, and shipper of apples in the State of Virginia. I also happen to be president of the National Apple Institute and chairman of the Virginia State Apple Commission.

Today I am speaking not only for myself, but also for the apple growers and shippers of Virginia, and for the national apple growers and shippers. I have presented a resolution adopted at our 34th annual meeting of the National Apple Institute in Atlantic City, N.J., on July 1, 1969. I would like to ask that this be made a part of the record, if it has not already been done so. On July 7, a letter from Fred Corey, executive vice president of the National Apple Institute was sent to Chairman W. R. Poage and all committee members. He asked that the above-mentioned resolution and his letter be made a part of the hearing record. If it has not already been done. So I would like to—

**Mr. FOLEY.** The letter from Mr. Corey, including the resolution attached to it, will be made a part of the record.<sup>1</sup>

**Mr. LACY.** I would like to reaffirm a few points you have heard, I hope, many times. Let me congratulate the committee. It certainly seems to be knowledgeable on the subject and I do not think we need to belabor it very much. We in the apple industry are most pleased with the Perishable Agricultural Commodities Act and the service that it gives the industry. I have here a copy from the "Packer" of July 5, which lists four or five of the things that happened from the PACA, but none of them mention any retailer that I recognized as I read it. But we are most pleased with it and with what it does.

I believe that everybody is cognizant of the increase in prices and the increase in inflation and I believe there will be little objection to the increase in dues or increase in the ceiling that is anticipated. For this reason we are certainly in favor of doing all that we can to keep this law self-supporting.

We would like to express our objections to increasing the exemption ceiling. I think perhaps as you talk of retailers and things we overlook certain other retailers. There are certain farm markets that do tremendous businesses, independent people that are covered by PACA. I happen to be a partner in one and we certainly are under the license part of it and I think most of your farm markets are under such a thing, and they are retailers.

<sup>1</sup> See p. 37.

I do not know that we would belabor too much this increase of \$10,000, from \$90,000 to \$100,000. It seems to me it is a very good compromise and all things equal, we would ask that you support this bill, that you support the amendments there, and help us in getting it passed.

Mr. FOLEY. Thank you very much. We appreciate your testimony, Mr. Lacy. As you probably know, or may know, Mrs. May and I have adjoining districts included in which is the total apple growing area of any importance in the State of Washington.

Mr. LACY. Yes; I knew that.

Mr. FOLEY. We consider that one of our major crops and we are particularly happy to see you here.

Mrs. MAY. May I say I notice Mr. Foley was very careful not to carry on the traditional competition between the Wenatchee and Yakima apple growing areas, as to who grows the most when he speaks of our great production of fine apples. We are very glad to have your statement today.

That is all.

Mr. FOLEY. Mr. Jones.

Mr. JONES. No questions.

Mr. FOLEY. Mr. Myers?

Mr. MYERS. No questions.

Mr. FOLEY. Thank you again.

The next and final witness will be Mr. E. W. Lins, vice president, Blue Goose Growers, Inc., Hagerstown, Md.

**STATEMENT OF E. W. LINS, VICE PRESIDENT, BLUE GOOSE GROWERS, INC., HAGERSTOWN, MD.**

Mr. LINS. Mr. Chairman, members of the subcommittee, I am E. W. Lins, vice president of Blue Goose Growers, Inc., a California corporation. This company is the largest apple and peach growers' marketing agent east of the Mississippi River as well as a substantial marketer of Florida citrus fruits. Our volume varies from year to year, but a normal average annual expectancy would be in the neighborhood of 6,000 carlot equivalents. Our grower clients originate this fruit in Florida, Georgia, South Carolina, North Carolina, Virginia, West Virginia, Maryland, Delaware, Pennsylvania, Missouri, and Kansas. Their shipments are sold in most of the 50 States, in Canada, Mexico, South America, and Europe.

Residing in Hagerstown, Md., I am also chairman of the Maryland State Apple Commission, Maryland State trustee to National Apple Institute, a member of the State Committee Maryland Agricultural Marketing Association and a member of the Apple Grower-Processor Relations Committee of American Agricultural Marketing Association.

My purpose in appearing before this subcommittee is to urge favorable consideration of H.R. 9857, a bill to amend the provisions of the Perishable Agricultural Commodities Act, 1930, as introduced by Mrs. Catherine May of this subcommittee.

Congressman W. R. Poage, in his capacity as chairman of your Committee on Agriculture, and probably most members of that

committee have already received countless letters from my contemporaries urging favorable action on this bill.

These, we are sure, emphasize the dire need to maintain provisions of the act without in any manner weakening the program or handicapping the Regulatory Branch Fruit and Vegetable Division, Consumer and Marketing Service, U.S. Department of Agriculture.

Further, it is our desire to have the operation of the act self-supporting as it has been in the past through licensing fees paid by those members of our industry covered by the act. We recognize that current costs of operation require an increasing ceiling on the license rate to maintain the present high-caliber services of the Regulatory Branch and would oppose any liberalization of exempt parties. We do not consider the increase to \$100,000 from \$90,000 for retailer exemption as a true liberalization since it should not under current conditions result in any fewer licensees, hence no lesser income for enforcement of the act's provisions.

We will not take the time of this group to praise the act or the Regulatory Branch nor cite examples of its benefits lest we appear redundant. Permit me, please, this one comment: 1969 rounds out my 50th year in the interstate marketing of fruits and vegetables. In our first 10 years prior to the adoption of the act our industry was chaotic. Transactions were replete with misunderstandings and, unfortunately, many unethical practices were condoned by a significant percentage of the traders—both buyers, sellers and their intermediaries.

Since 1930 when the act was well enforced, misunderstandings, unfair practices and legal entanglements between principals have been at a minimum. The act has given us a much needed track to run on and permitted an important industry in vital foodstuffs to be proud of its record in serving to advantage not only producer but consumer.

H.R. 9857 will in reality not change the act but keep it current with the changing economics of this generation. Please send it out of committee with flying colors and urge its passage on the floor.

Mr. FOLEY. Thank you very much, Mr. Lins. We appreciate your testimony. I think if our distinguished colleague, Mr. Sisk, who represents a great agricultural district in the State of California, were here, he might comment on the fact that you are a California corporation importing Florida citrus products, which is very unusual.

Mr. LINS. I might explain that by saying that we are a national organization. We are just incorporated in California.

Mr. FOLEY. I see.

Mrs. May?

Mrs. MAY. No questions. Thank you.

Mr. FOLEY. Mr. Jones.

Mr. JONES. No questions.

Mr. FOLEY. Mr. Myers?

Mr. MYERS. No questions.

Mr. FOLEY. Thank you very much.

(The following statement and letters were also submitted to the subcommittee:)

STATEMENT OF ROBERT M. FREDERICK, LEGISLATIVE REPRESENTATIVE, THE  
NATIONAL GRANGE

Mr. Chairman and members of the subcommittee, the National Grange is appreciative of this opportunity to support H.R. 9857, introduced by the distinguished Congresswoman from the State of Washington, Catherine May.

H.R. 9857, a bill to amend the provisions of the Perishable Agricultural Commodities Act, 1930, to authorize an increase in license fee and for other purposes, is vitally needed if the fresh fruit and vegetable industry is going to continue to have the protection provided under the Act.

H.R. 9857, in addition to raising the statutory ceiling on license fees to \$100, would broaden the exemption from the licensing provisions for certain retailers and frozen food brokers from \$90,000 to \$100,000. Exempt at present are (a) retailers whose purchases of perishable agricultural commodities amount to \$90,000 or less per year and (b) frozen food brokers negotiating sales for and on behalf of vendors and whose sales of frozen fruits and vegetables have an invoice value of \$90,000 or less per year.

The proposed exemption would provide relief from the licensing provisions of the Act for a larger number of the smaller operators in these two groups. It is estimated that under the proposed exemption, fewer than 2 percent of the food retailing firms would be subject to the licensing provisions.

The Perishable Agricultural Commodities Act was enacted in 1930 under the sponsorship and with the unanimous support of the leading trade associations in the fresh fruit and vegetable industry and major farm organizations, including the National Grange. It establishes a code of fair trading practices in the marketing of fresh and frozen fruits and vegetables in interstate and foreign commerce. It also provides a method for settlement of the contractual disputes of those handling these commodities.

Commission merchants, brokers, and dealers, including certain retailers and processors, operating subject to the Act are required to be licensed. These licenses can be suspended or revoked for violations of the Act.

During the past fiscal year, for example, a total of 2,272 such reparation complaints were handled by the Department. Informal amicable settlements were arranged in 930 cases resulting in payments to the parties of approximately \$2.3 million. In addition, 391 formal orders were issued awarding reparations amounting to over \$777,000. No fees are assessed for the handling of these complaints.

The above service can be provided for the industry free of fees because financing of the administration of this Act is self-supporting from annual license fees. These fees are deposited in a special PACA Fund and all costs of the Act (except the Office of the General Counsel) are financed from these fees.

Under the Act, the Secretary is authorized to establish the annual license fee, within the maximum provided in the Act, at an amount sufficient to provide the revenue to meet anticipated expenses for administering the Act. The present maximum fee authorization of \$50 was set in the amendment of October 1, 1962, to the Perishable Agricultural Commodities Act. Under this authorization, the annual fee was increased to \$36 on January 1, 1963, to \$42 on January 1, 1965, and to \$50 on January 1, 1969.

Although the fees have been increased 3 times since 1962, the costs of administration have been higher each year, largely because of adjustments in salary scales and fringe benefits which together account for over 80 percent of the expenditures under this Act. These increases have taken place even though the number of employees engaged in the administration of this Act is at the lowest level in over 10 years.

The need to raise the statutory ceiling on license fees arises from two factors: (a) the declining number of firms subject to license, and (b) the increasing cost of administering the Act. During the past five years the net decline in number of firms licensed has averaged over 670 per year. Nevertheless, the number of complaints filed under the Act and the requests for advice and assistance have remained relatively constant.

Due to reasons pointed out earlier, the PACA Fund incurred a deficit of over \$12,000 in fiscal year 1968 and a deficit of approximately \$58,000 during the first 6 months of fiscal year 1969. With the continued decline in number of licensees, it is likely that further deficits will occur in fiscal years 1970 and 1971.

Therefore, the National Grange respectfully urges this Subcommittee to take speedy and affirmative action on H.R. 9857 and to report it to the full Committee for immediate approval.

We would appreciate this statement being made a part of the hearing record.  
Thank you.

**STATEMENT OF DOYLE BURNS, EXECUTIVE DIRECTOR, NATIONAL POTATO COUNCIL**

Mr. Chairman, I would like to request that this statement be filed in support of H.R. 9857 to increase the allowable license fees under the PAC Act.

The Perishable Agricultural Commodities Act was designed specifically for the fruit and vegetable industry. This program has gone a long way to stabilize and strengthen the industry. Because of the perishable nature of these products and because most of the buying or selling is done over the phone, it is mandatory that everyone's reputation be backed by a recognized authority to assure satisfactory settlement of legitimate claims. This legislation provides that authority. The industry has become accustomed to the practice of operating under and with the PAC Act. It would do irreparable damage to attempt operation without its protection.

We recognize that the costs of operation under this Act are no different than all others. It is necessary to increase the allowable limits of the law at periodic intervals and that time has arrived once more. Therefore, we support the increase provided for in this legislation.

In regard to the exemption for small operators who do a limited volume of business, it has been our experience that it is generally the small, under-capitalized and sometimes overly ambitious operators who run afoul of the Act. In actual practice the smaller operators are in violation a greater proportion of the time than the established, larger-volume operators. We would seriously question the validity of increasing or even allowing an exemption.

I will appreciate your consideration of my testimony in favor of the proposed Bill, H.R. 9857.

**FLORIDA FRUIT & VEGETABLE ASSOCIATION,  
Orlando, Fla., July 14, 1969.**

Re H.R. 9857, a bill to amend the provisions of the Perishable Agricultural Commodities Act, 1930, to authorize an increase in license fee, and for other purposes.

Hon. THOMAS S. FOLEY,  
*Chairman, Special Subcommittee on Domestic Marketing and Consumer Relations,  
U.S. House of Representatives, Washington, D.C.*

DEAR CHAIRMAN FOLEY: We have been advised that the subject proposed Bill will come before your Subcommittee for hearing shortly and wish to take this opportunity to let you know that this Association endorses the provisions of this Bill.

Prior to its introduction we communicated with Senator Holland on the necessity for this legislation and as you know, he introduced S. 1863, an identical Bill.

Please enter this letter into the hearing record in support of the proposed Bill.

Sincerely yours,

**JOFFRE C. DAVID,  
Secretary-Treasurer.**

**FELIX M. WHEELER & SON,  
Shreveport, La., June 19, 1969.**

Hon. JOE D. WAGGONNER, Jr.,  
*House of Representatives,  
Washington, D.C.*

DEAR JOE: There is pending legislation before the House which directly concerns us.

We would like to go on record as supporting H.R. 9857 introduced by Rep. May. This bill concerns the raising of fees for the Perishable Agricultural Commodity Act (PACA).

Joe, the PACA is one of those government agencies that is well appreciated by our industry. It makes a better business climate for all concerned from grower through buyer. If raising the fees for this agency will help in its duties, we are for it 100%.

We would like for you to make our views known to the House Agricultural Committee.

Thank you for all the work that you are going for us in this district. Keep up the good work and we will see you next time you are home.

With kindest personal regards, we are,

Yours very truly,

**FELIX M. WHEELER, Jr.  
FELIX M. WHEELER, Sr.**

THE OHIO APPLE INSTITUTE, INC.,  
New Philadelphia, Ohio,  
July 15, 1969.

Subject: H.R. 9857.

Hon. W. R. POAGE,

*Chairman, Committee on Agriculture,  
U.S. House of Representatives, Washington, D.C.*

DEAR MR. POAGE: The apple growers of Ohio, and The Ohio Apple Institute join in urging the full approval and support of H.R. 9857, amending the Perishable Agricultural Commodities Act of 1930 to provide for increased license fees to keep this essential Act self-sustaining and operational, in line with increased costs and declining numbers of handlers of fresh produce.

We believe this is essential legislation to enable the continued operation of this vitally helpful program in agriculture.

Although we believe the programs of P. A. C. A., to be most useful to all segments of the fresh produce industry, should include licensing of all receivers and handlers of produce, we reluctantly concur in the provision of H.R. 9857 which broadens the exemption of certain retail operations of \$100,000 or less produce volume rather than the \$90,000 provision presently existant.

We emphatically urge no further exemptions, as any further exempt provisions only acts toward weakening the program and nullifying and/or making more difficult its investigative and enforcement provisions.

We request respectfully that this letter be made a part of the hearing record on H.R. 9857.

Sincerely yours,

NORMAN M. WITHERSPOON, Manager.

INTERNATIONAL APPLE ASSOCIATION, INC.,  
OFFICE OF THE EXECUTIVE VICE PRESIDENT,  
Washington, D.C., July 23, 1969.

CONGRESSMAN THOMAS S. FOLEY,  
*Chairman, Subcommittee on Domestic Marketing and Consumer Relations, House  
Agricultural Committee, Washington, D.C.*

DEAR CONGRESSMAN FOLEY: Unfortunately, absence from the office prevented our testifying orally at the hearings on H.R. 9857 on July 17, 1969, relative to increasing the maximum fee to be collected from firms or individuals licensed under the Perishable Agricultural Commodities Act.

This is to inform you the membership of the International Apple Association, Inc. strongly and wholeheartedly supports H.R. 9857 and would vigorously oppose any further exemption beyond that encompassed in the bill. In fact, we can see no valid reason for increasing the value of business test from \$90,000 to \$100,000 for retailers and frozen food brokers. The value and need of the PACA Act for small retailers and small shippers is just as great, if not greater, than for the large firms. We would emphasize that the "protection" afforded the retailer (large or small) under this Act is real and most worthwhile, and the fee, in relation to the value derived, is small. Unfortunately, many small retailers have not been properly "educated" of the advantages and benefits of operating under PACA.

The PACA has proven to be good, sound legislation for growers, shippers, brokers, retailers, etc., and it has been economically and fairly administered. Without it we could easily go back to the "nightmare" that existed prior to its original enactment.

If possible, we will appreciate this letter being made part of the Hearing Record.

Sincerely,

FRED W. BURROWS,  
*Executive Vice President.*

NATIONAL APPLE INSTITUTE,  
THE APPLE GROWERS OF AMERICA,  
*Washington, D.C., July 7, 1969.*

Hon. W. R. POAGE,  
*Chairman, Committee on Agriculture,  
U.S. House of Representatives,  
Washington, D.C.*

DEAR MR. POAGE: Enclosed is a copy of a resolution adopted by our National Apple Institute Board of Trustees at our annual meeting in Atlantic City, New Jersey, July 1, relative to legislation now pending before the Committee on Agriculture. H.R. 9857, amending the Perishable Agricultural Commodities Act of 1930 to provide for increased license fees to keep this essential Act self-sustaining and operational, in line with increased costs and declining numbers of handlers of fresh produce, is essential legislation to enable the continued operation of this vitally helpful program in agriculture.

We strongly urge its approval and full support and recommendation by the Committee on Agriculture.

While we feel strongly that the programs of the P.A.C.A., to be most effective and helpful to all segments of the fresh produce industry, should include licensing of all receivers and handlers of produce, we do, reluctantly, concur in the provision of H.R. 9857 which broadens the exemption of certain retail operations of \$100,000 or less produce volume rather than the \$90,000 provision presently existant.

We most strongly urge that there be no further exemptions.

The PACA provides a valuable service to all segments of the fresh produce industry and is supported and indorsed by most all participants, inclusive of most retail operations.

Any further exempt provisions only acts toward weakening the program and nullifying and/or making more difficult its investigative and enforcement provisions.

We respectfully ask that this letter and enclosure be made a part of the hearing record on H.R. 9857.

Sincerely,

FRED P. COREY,  
*Executive Vice President.*

**RESOLUTION ADOPTED AT THE 34TH ANNUAL MEETING OF THE NATIONAL APPLE INSTITUTE, ATLANTIC CITY, NEW JERSEY, JULY 1, 1969**

Whereas the Perishable Agricultural Commodities Act of 1930 has been and continues to be of great value to the produce industry, and

Whereas the operation of the Act is largely self supporting via license fees assessed fresh produce handlers in the industry, and

Whereas the costs of licensing and administering the Act are increasing, in line with most all other costs of doing business today;

Now therefore be it resolved, that the National Apple Institute endorses the provisions of legislation (H.R. 9857 in the House of Representatives and S. 1863 in the U.S. Senate) to amend the Act to increase the maximum authorized ceiling for license fees to enable the program to be continued and fee adjustments as necessary; and

Be it further resolved that the National Apple Institute oppose any further exemption from licensee coverage beyond that which is encompassed in the current amending legislation.

Mr. FOLEY. That concludes the hearings scheduled for today on this legislation and the Chair wishes to thank the members for their attendance and all of the witnesses for their cooperation and patience.

Accordingly, the Subcommittee on Domestic Marketing and Consumer Relations will stand in adjournment, to meet at the call of the Chair.

(Whereupon, at 12 noon, the subcommittee was adjourned, subject to the call of the Chair.)



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and the *lateral* *anterior* and *posterior* *commissures* of the brain.

and the first record of the species in the state. A detailed account of the biology of the species will be published elsewhere.

He was a man of great energy and determination, and he left a lasting legacy in the field of education.

As a result, the number of people who have been infected with the virus has increased rapidly, leading to a significant increase in the number of deaths.

It is also important to note that the *Environmetrics* journal has been ranked as one of the top journals in its field by the Journal Citation Reports (JCR) and the Science Citation Index (SCI).

After the first few days of the campaign, the new government had to face the task of consolidating its power and dealing with the challenges posed by the opposition.

the first time, and I have no objection to it. I am not in a position to say whether it is good or bad, but I do not see any reason why it should not be adopted.





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Increase license fees

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